

compounding assumptions. A securities acquisition loan may be evidenced by any note, bond, debenture, or certificate. Also, section 133(b)(2) provides that certain loans between related persons are not securities acquisition loans. In addition, a loan from a commercial lender to an ESOP or sponsoring corporation to purchase employer securities will not be treated as a securities acquisition loan to the extent that such loan is used, either directly or indirectly, to purchase employer securities from any other qualified plan, including any other ESOP, maintained by the employer or any other corporation which is a member of the same controlled group (as defined in section 409(l)(4)).

Q-2: What lenders are eligible to receive the fifty percent interest exclusion?

A-2: Under section 133(a), a bank (within the meaning of section 581), an insurance company to which subchapter L applies, or a corporation (other than a subchapter S corporation) actively engaged in the business of lending money may exclude from gross income fifty percent of the interest received with respect to a securities acquisition loan (as defined in Q&A-1 of §1.133-1T). For purposes of section 133(a)(3), a corporation is actively engaged in the business of lending money if it lends money to the public on a regular and continuing basis (other than in connection with the purchase by the public of goods and services from the lender or a related party). A corporation is not actively engaged in the business of lending money if a predominant share of the original value of the loans it makes to unrelated parties (other than in connection with the purchase by the public of goods and services from the lender or a related party) are securities acquisition loans.

Q-3: May loans which qualify for the fifty percent interest exclusion under section 133 be syndicated to other lending institutions?

A-3: Securities acquisition loans under section 133 may be syndicated to other lending institutions provided that such lending institutions are described in section 133(a) (1), (2) or (3) and the loan was originated by a qualified holder. Subsequent holders of the

debt instrument may qualify for the partial interest exclusion of section 133 if such holders satisfy the requirements of section 133 and such loan does not fail to be a securities acquisition loan under section 133(b)(2).

Q-4: When is section 133 effective?

A-4: Section 133 applies to securities acquisition loans made after July 18, 1984, and used to acquire employer securities after July 18, 1984. The provision does not apply to loans made after July 18, 1984, to the extent that such loans are renegotiations, directly or indirectly, of loans outstanding on such date. A loan extended to an ESOP or sponsoring corporation after July 18, 1984, will be treated as a renegotiation of an outstanding loan if the loan proceeds are used to refinance acquisitions of employer securities made prior to July 19, 1984. For example, if an ESOP borrowed money prior to July 19, 1984, to purchase employer securities and after July 18, 1984, borrows other funds from the same or a different commercial lender to repay the first loan, the second loan will be treated as a renegotiation of an outstanding loan to the extent of the repaid amount. Similarly, if, after July 18, 1984, an ESOP sells employer securities, uses the proceeds to retire a pre-July 19, 1984, loan and obtains a second loan to acquire replacement employer securities, the second loan will be treated as a renegotiation of an outstanding loan.

[T.D. 8073, 51 FR 4319, Feb. 4, 1986]

§1.141-0 Table of contents.

This section lists the captioned paragraphs contained in §§1.141-1 through 1.141-16.

§1.141-1 Definitions and rules of general application.

- (a) In general.
- (b) Certain general definitions.
- (c) Elections.
- (d) Related parties.

§1.141-2 Private activity bond tests.

- (a) Overview.
- (b) Scope.
- (c) General definition of private activity bond.
- (d) Reasonable expectations and deliberate actions.
 - (1) In general.
 - (2) Reasonable expectations test.

§1.141-0

(3) Deliberate action defined.
(4) Special rule for dispositions of personal property in the ordinary course of an established governmental program.

(5) Special rule for general obligation bond programs that finance a large number of separate purposes.

- (e) When a deliberate action occurs.
- (f) Certain remedial actions.
- (g) Examples.

§1.141-3 Definition of private business use.

(a) General rule.

- (1) In general.
- (2) Indirect use.
- (3) Aggregation of private business use.
- (b) Types of private business use arrangements.

- (1) In general.
- (2) Ownership.
- (3) Leases.
- (4) Management contracts.
- (5) Output contracts.
- (6) Research agreements.
- (7) Other actual or beneficial use.
- (c) Exception for general public use.

(1) In general.
(2) Use on the same basis.
(3) Long-term arrangements not treated as general public use.

- (4) Relation to other use.
- (d) Other exceptions.

(1) Agents.
(2) Use incidental to financing arrangements.

(3) Exceptions for arrangements other than arrangements resulting in ownership of financed property by a nongovernmental person.

- (4) Temporary use by developers.
- (5) Incidental use.
- (6) Qualified improvements.
- (e) Special rule for tax assessment bonds.
- (f) Examples.
- (g) Measurement of private business use.

(1) In general.
(2) Measurement period.
(3) Determining average percentage of private business use.

(4) Determining the average amount of private business use for a 1-year period.

- (5) Common areas.
- (6) Allocation of neutral costs.
- (7) Commencement of measurement of private business use.
- (8) Examples.

§1.141-4 Private security or payment test.

(a) General rule.

(1) Private security or payment.
(2) Aggregation of private payments and security.

(3) Underlying arrangement.

(b) Measurement of private payments and security.

- (1) Scope.

26 CFR Ch. I (4-1-04 Edition)

(2) Present value measurement.

(c) Private payments.

- (1) In general.
- (2) Payments taken into account.
- (3) Allocation of payments.

(d) Private security.

- (1) In general.
- (2) Security taken into account.
- (3) Pledge of unexpended proceeds.

(4) Secured by any interest in property or payments.

(5) Payments in respect of property.

(6) Allocation of security among issues.

(e) Generally applicable taxes.

- (1) General rule.
- (2) Definition of generally applicable taxes.
- (3) Special charges.

(4) Manner of determination and collection.

(5) Payments in lieu of taxes.

(f) Certain waste remediation bonds.

(1) Scope.

(2) Persons that are not private users.

(3) Persons that are private users.

(g) Examples.

§1.141-5 Private loan financing test.

(a) In general.

(b) Measurement of test.

(c) Definition of private loan.

(1) In general.

(2) Application only to purpose investments.

(3) Grants.

(4) Hazardous waste remediation bonds.

(d) Tax assessment loan exception.

(1) General rule.

(2) Tax assessment loan defined.

(3) Mandatory tax or other assessment.

(4) Specific essential governmental function.

(5) Equal basis requirement.

(6) Coordination with private business tests.

(e) Examples.

§1.141-6 Allocation and accounting rules.

(a) Allocation of proceeds to expenditures.

(b) Allocation of proceeds to property. [Reserved]

(c) Special rules for mixed use facilities. [Reserved]

(d) Allocation of proceeds to common areas. [Reserved]

(e) Allocation of proceeds to bonds. [Reserved]

(f) Treatment of partnerships. [Reserved]

(g) Examples. [Reserved]

§1.141-7 Special rules for output facilities.

(a) Overview.

(b) Definitions.

(1) Available output.

(2) Measurement period.

(3) Sale at wholesale.

(4) Take contract and take or pay contract.

Internal Revenue Service, Treasury

§1.141-0

- (5) Requirements contract.
- (6) Nonqualified amount.
- (c) Output contracts.
 - (1) General rule.
 - (2) Take contract or take or pay contract.
 - (3) Requirements contract.
 - (4) Output contract properly characterized as a lease.
- (d) Measurement of private business use.
- (e) Measurement of private security or payment.
 - (f) Exceptions for certain contracts.
 - (1) Small purchases of output.
 - (2) Swapping and pooling arrangements.
 - (3) Short-term output contracts.
 - (4) Certain conduit parties disregarded.
 - (g) Special rules for electric output facilities used to provide open access.
 - (1) Operation of transmission facilities by nongovernmental persons.
 - (2) Certain use by nongovernmental persons under output contracts.
 - (3) Ancillary services.
 - (4) Exceptions to deliberate action rules.
 - (5) Additional transactions as permitted by the Commissioner.
 - (h) Allocations of output facilities and systems.
 - (1) Facts and circumstances analysis.
 - (2) Illustrations.
 - (3) Transmission and distribution contracts.
 - (4) Allocation of payments.
 - (i) Examples.

§ 1.141-8 \$15 million limitation for output facilities.

- (a) In general.
 - (1) General rule.
 - (2) Reduction in \$15 million output limitation for outstanding issues.
 - (3) Benefits and burdens test applicable.
- (b) Definition of project.
 - (1) General rule.
 - (2) Separate ownership.
 - (3) Generating property.
 - (4) Transmission and distribution.
 - (5) Subsequent improvements.
 - (6) Replacement property.
- (c) Examples.

§ 1.141-9 Unrelated or disproportionate use test.

- (a) General rules.
 - (1) Description of test.
 - (2) Application of unrelated or disproportionate use test.
- (b) Unrelated use.
 - (1) In general.
 - (2) Use for the same purpose as government use.
- (c) Disproportionate use.
 - (1) Definition of disproportionate use.
 - (2) Aggregation of related uses.
 - (3) Allocation rule.
 - (4) Maximum use taken into account.
 - (e) Examples.

§ 1.141-10 Coordination with volume cap. [Reserved]

§ 1.141-11 Acquisition of nongovernmental output property. [Reserved]

§ 1.141-12 Remedial actions.

- (a) Conditions to taking remedial action.
 - (1) Reasonable expectations test met.
 - (2) Maturity not unreasonably long.
 - (3) Fair market value consideration.
 - (4) Disposition proceeds treated as gross proceeds for arbitrage purposes.
 - (5) Proceeds expended on a governmental purpose.
- (b) Effect of a remedial action.
 - (1) In general.
 - (2) Effect on bonds that have been advance refunded.
- (c) Disposition proceeds.
 - (1) Definition.
 - (2) Allocating disposition proceeds to an issue.
 - (3) Allocating disposition proceeds to different sources of funding.
- (d) Redemption or defeasance of non-qualified bonds.
 - (1) In general.
 - (2) Special rule for dispositions for cash.
 - (3) Notice of defeasance.
 - (4) Special limitation.
 - (5) Defeasance escrow defined.
- (e) Alternative use of disposition proceeds.
 - (1) In general.
 - (2) Special rule for use by 501(c)(3) organizations.
 - (f) Alternative use of facility.
 - (g) Rules for deemed reissuance.
 - (h) Authority of Commissioner to provide for additional remedial actions.
 - (i) Effect of remedial action on continuing compliance.
 - (j) Nonqualified bonds.
 - (1) Amount of nonqualified bonds.
 - (2) Allocation of nonqualified bonds.
 - (k) Examples.

§ 1.141-13 Refunding issues. [Reserved]

§ 1.141-14 Anti-abuse rules.

- (a) Authority of Commissioner to reflect substance of transactions.
- (b) Examples.

§ 1.141-15 Effective dates.

- (a) Scope.
- (b) Effective dates.
 - (1) In general.
 - (2) Certain short-term arrangements.
 - (3) Certain prepayments.
- (c) Refunding bonds.
- (d) Permissive application of regulations.
- (e) Permissive retroactive application of certain sections.
- (f) Effective dates for certain regulations relating to output facilities.
 - (1) General rule.

§ 1.141-1

26 CFR Ch. I (4-1-04 Edition)

(2) Transition rule for requirements contracts.

(g) Refunding bonds for output facilities.

(h) Permissive retroactive application.

(i) Permissive application of certain regulations relating to output facilities.

§ 1.141-16 Effective dates for qualified private activity bond provisions.

(a) Scope.

(b) Effective dates.

(c) Permissive application.

[T.D. 8712, 62 FR 2283, Jan. 16, 1997, as amended by T.D. 8757, 63 FR 3259, Jan. 22, 1998; T.D. 8941, 66 FR 4664, Jan. 18, 2001; T.D. 9016, 67 FR 59759, Sept. 23, 2002; T.D. 9085, 68 FR 45775, Aug. 4, 2003]

TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

§ 1.141-1 Definitions and rules of general application.

(a) *In general.* For purposes of §§ 1.141-0 through 1.141-16, the following definitions and rules apply: the definitions in this section, the definitions in § 1.150-1, the definition of placed in service under § 1.150-2(c), the definition of grant under § 1.148-6(d)(4)(iii), the definition of reasonably required reserve or replacement fund in § 1.148-2(f), and the following definitions under § 1.148-1: bond year, commingled fund, fixed yield issue, higher yielding investments, investment, investment proceeds, issue price, issuer, nonpurpose investment, purpose investment, qualified guarantee, qualified hedge, reasonable expectations or reasonableness, rebate amount, replacement proceeds, sale proceeds, variable yield issue, and yield.

(b) *Certain general definitions.*

Common areas means portions of a facility that are equally available to all users of a facility on the same basis for uses that are incidental to the primary use of the facility. For example, hallways and elevators generally are treated as common areas if they are used by the different lessees of a facility in connection with the primary use of that facility.

Consistently applied means applied uniformly to account for proceeds and other amounts.

Deliberate action is defined in § 1.141-2(d)(3).

Discrete portion means a portion of a facility that consists of any separate

and discrete portion of a facility to which use is limited, other than common areas. A floor of a building and a portion of a building separated by walls, partitions, or other physical barriers are examples of a discrete portion.

Disposition is defined in § 1.141-12(c)(1).

Disposition proceeds is defined in § 1.141-12(c)(1).

Essential governmental function is defined in § 1.141-5(d)(4)(ii).

Financed means constructed, reconstructed, or acquired with proceeds of an issue.

Governmental bond means a bond issued as part of an issue no portion of which consists of private activity bonds.

Governmental person means a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.

Hazardous waste remediation bonds is defined in § 1.141-4(f)(1).

Measurement period is defined in § 1.141-3(g)(2).

Nongovernmental person means a person other than a governmental person.

Output facility means electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities.

Private business tests means the private business use test and the private security or payment test of section 141(b).

Proceeds means the sale proceeds of an issue (other than those sale proceeds used to retire bonds of the issue that are not deposited in a reasonably required reserve or replacement fund). Proceeds also include any investment proceeds from investments that accrue during the project period (net of rebate amounts attributable to the project period). Disposition proceeds of an issue are treated as proceeds to the extent provided in § 1.141-12. The Commissioner may treat any replaced amounts as proceeds.

Project period means the period beginning on the issue date and ending on the date that the project is placed in service. In the case of a multipurpose